

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA	:	
Plaintiff,	:	Case Nos. 3:10-cr-134
	:	3:12-cv-201
vs.	:	
	:	JUDGE WALTER H. RICE
JAMES A. SCHOOLER,	:	
Defendant	:	

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS ON RULE 60(b) MOTION AND APPEAL *IN FORMA PAUPERIS* (DOC. #40); ADOPTING REPORT AND RECOMMENDATIONS ON DEFENDANT'S SECOND RULE 60(b) MOTION AND MOTION FOR RECONSIDERATION (DOC. #47) AND OVERRULING PETITIONER'S OBJECTIONS THERETO (DOC. #48); OVERRULING PETITIONER'S RULE 60(b) MOTION FOR RECONSIDERATION (DOC. #36) AND PETITIONER'S SECOND RULE 60(b) MOTION FOR RECONSIDERATION (DOC. #46); DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY AND MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

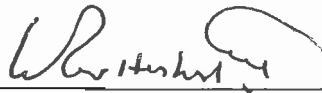
Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz, in his Report and Recommendations, filed July 10, 2012 (Doc. #40), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court ADOPTS said judicial filing in its entirety, and OVERRULES Petitioner's Motion for Reconsideration Pursuant to Rule 60(b) (Doc. #36). The Court notes that Petitioner filed no objections to that Report and Recommendations.

Likewise, based on the reasoning and citations of authority set forth by Magistrate Judge Merz in his Report and Recommendations, filed August 16, 2012 (Doc. #47), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court ADOPTS said judicial filing in its entirety, OVERRULES Petitioner's objections thereto (Doc. #48), and OVERRULES Petitioner's Second Motion for Reconsideration Pursuant to Rule 60(b) (Doc. #46).¹

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Petitioner is again denied a certificate of appealability and denied leave to appeal *in forma pauperis*.

The captioned case shall remain terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: October 9, 2012



WALTER H. RICE
UNITED STATES DISTRICT JUDGE

¹ The Court notes that Petitioner filed a Notice of Appeal on September 7, 2012, while these motions were still pending. As Magistrate Judge Merz noted in his Amendment to Report and Recommendations on Defendant's Second Rule 60(b) Motion (Doc. #50), however, this does not divest the Court of jurisdiction to rule on the pending motions. See Fed. R. Civ. P. 62.1.